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September 10, 2020

Via ECF

Hon. Sarah Netburn
U.S. District Court for the Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Rich v. Fox News Network, LLC*, No. 18-cv-2223

Dear Judge Netburn:

I write in advance of the hearing tomorrow, September 11, 2020, to provide the Court with an update as to the progress of, and schedule for, discovery. *See* Dkt. 190.

As the Court will recall, in their letter dated July 22, 2020, Plaintiffs requested that the Court maintain the then-current discovery schedule, which would have required that discovery be completed by December 31, 2020, and that all fact depositions in this matter be completed by September 18, 2020. Dkt. 165 at 4. Following a hearing on August 4, 2020, the Court declined to extend the deadline for the completion of all discovery but instructed the parties to propose new interim deadlines.

Plaintiffs' opposition to Defendants' request for an extension was premised on two propositions: (1) that all depositions could reasonably be completed by September 18, 2020, and (2) that they "anticipate[d] deposing *at most* ten Fox witnesses." Dkt. 165, n. 2 (emphasis added). Recent events have demonstrated that both premises were materially incorrect.

First, far from completing all fact depositions by September 18, 2020, the parties will not have completed a single deposition by that date. Indeed, Plaintiffs have refused to schedule *even one* deposition before September 22, rejecting three separate proposed depositions offered by Fox News prior to that date.

Second, Plaintiffs have now indicated that they intend to take to at least 19 depositions—17 of current or former Fox employees, contributors, or guests. Thus, Plaintiffs now seek to take almost double the number of depositions that they stated they "anticipate[d]" taking, *see* Dkt. 165,

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when they opposed any extension of the discovery schedule in late July and August. It is not surprising that a party would hone its deponent list as the close of discovery approached. But that the list has nearly doubled demonstrates the divergence between the facts presented to the Court in late July and early August and the reality of discovery today.

In light of these delays, as well as certain deponents' professional obligations (including those related to covering the Presidential Election and debates), the Parties have already agreed to take a number of depositions in November. Several other recently noticed depositions remain unscheduled. While the parties endeavor to complete all depositions before the scheduled close of discovery on December 31, 2020, and have attempted to do so cooperatively, it is likely that fact depositions will stretch through at least November regardless of when Mr. Butowsky is deposed or whom he deposes. All of these facts may have an impact on the practicability of the current schedule. But even if they do not, we believe they are material to the Court's consideration of Mr. Butowsky's request and the discovery schedule more generally.

Respectfully,

/s/ Katherine A. Petti
Counsel for Fox News Network, LLC

CC: Counsel of Record